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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by the International Association of Educators for World Peace, a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[9 April 1997]

1. On 24 February 1996, two unarmed light civil aircraft registered in the United States were shot down by two MiG aircraft belonging to the Cuban air force: both countries are members of the Commission on Human Rights. The light aircraft, which were piloted by civilians carrying out a humanitarian search and rescue mission over the Straits of Florida, were flying in international airspace. Their destruction is a violation of the right to life of their four crew members, as set forth in article 3 of the Universal Declaration of Human Rights.

2. Armando Alejandre, a 45-year-old Cuban-born United States citizen, was flying for the second time to supply Cuban balseros (people who leave Cuba on makeshift rafts) who had been shipwrecked in the Bahamas; Carlos Costa, who was 29 and was born in the United States, had saved more than 400 balseros in the course of hundreds of missions over the Straits of Florida; Mario de la Pena, who was 24 years old and was born in the United States, had found and assisted many people lost at sea as a pilot; Pablo Morales, a 29-year-old Cuban-born United States resident, had himself been picked up in the Straits as a balsero in 1992.

3. On 24 February 1996, the anniversary of the outbreak of the war of independence against Spain was due to be celebrated. Concilio Cubano, a movement to unify the internal opposition on the island, had planned to hold a public meeting. As a result, as the date approached the Cuban Government intensified its repression of the movement, imprisoned numerous dissidents and prohibited the meeting.

4. The destruction of the light aircraft was part of a diversionary tactic by the Cuban Government to distract attention from the tense internal situation; the strategy began with a last-minute request by Cuba to the Bahamas for permission to visit the balseros' camp on 24 February. The visit, which prevented the mission originally planned for the light aircraft, i.e. to supply the balseros, from taking place, was cancelled by the Bahamas.

5. The flight plan was then changed to a search and rescue mission for balseros in the Straits of Florida. The first aircraft was shot down over international waters 21 nautical miles from Cuba at 3.21 p.m., and the second seven minutes later, 22 nautical miles from the island. The Cuban MiGs shot them down with missiles, completely obliterating the aircraft and their occupants and providing a spectacular culmination to the wave of repression.

6. The Cuban Government has admitted that its air force shot down the light aircraft. In an interview on 11 March 1996 with Time magazine, the Head of the Cuban Government acknowledged that the act was premeditated, as he had ordered the air force to shoot them down before the 24th, and he assumed direct responsibility for the act.

> "They shot the planes down. They are professionals. They did what they believed was the right thing. These are all people we trust, but I take responsibility for what happened."

7. The so-called evidence shown by the Head of the Cuban Government to the world to justify the destruction included a Cuban television broadcast by Juan Pablo Roque, a military pilot who deserted to the United States in 1992. Juan Pablo Roque who, according to Cuba had survived the aircrafts' destruction, gave evidence that he had participated in the fateful flight; in fact the evidence discredited him as he was in the Bahamas on 24 February and never flew in the light aircraft on that day.

8. The Government of Cuba has justified the aircrafts' destruction as a legitimate act of defence of its national sovereignty, but few people accept this argument. In a document entitled "Llamada a la Reconciliación y a la Paz" (Appeal for reconciliation and peace), published on 12 March 1996, the Cuban Catholic Church condemned it; in a letter dated Mothers' Day 1996, the political prisoners in Quivican prison (Havana) unanimously condemned it and Concilio Cubano has also expressed its disapproval of the destruction of the aircraft.

9. The United States Ambassador, Mrs. Madeleine K. Albright, made the following statement to the United Nations General Assembly on 6 March 1996:

> "But we cannot be silent when our citizens are murdered, and we will not allow the Cuban Government, which ordered this crime, to transfer blame to the victims of it."

The Ambassador presented transcripts of the conversations between the pilots and ground control in Cuba, proving that the fighter aircraft never attempted to make radio contact with the light planes, that they never approached them to force them to land, that they fired no warning shots and that they gave no warning that an attack was imminent.

10. In response to the destruction, the United States Congress adopted the Helms-Burton Act and introduced economic sanctions against foreign investors in Cuba using property confiscated by Cuba from the United States Government or citizens. The Department of Justice has initiated criminal investigations into the aircrafts' destruction.

11. The International Civil Aviation Organization (ICAO) carried out an investigation into the destruction at the request of the United Nations Security Council and the Governments of Cuba and the United States. The radar data provided by Cuba and by the United States gave different positions for the light aircraft shot down, and ICAO based its conclusions on the positions reported by particularly reliable sources: the Norwegian vessel Majesty of the Seas, belonging to the Caribbean Cruise Line, and the fishing vessel Tri-Liner. ICAO concluded that the aircraft had been shot down 9 and 10 nautical miles respectively outside Cuban territorial airspace. It also found that:

> "Means other than interception were available to Cuba, such as radio communication, but had not been utilized." (3.18)

Cuba never attempted to instruct the light aircraft to land. During the interception, "the standard procedures for manoeuvring and signals by the military interceptor aircraft, in accordance with ICAO provisions and as published in AIP Cuba were not followed" (3.20) by the MiGs. The resolution adopted by ICAO on 26 June 1996 confirmed that States must refrain from the use of weapons against civil aircraft in flight and that, when intercepting civil aircraft, the lives of persons on board and the safety of the aircraft must not be endangered. ICAO also stated that the use of weapons against civil aircraft in flight was incompatible with elementary considerations of humanity and violated customary international law.

12. The United Nations Security Council endorsed and approved this ICAO resolution (26 July 1996, resolution 1067) and concluded that the destruction "violated the principle that States must refrain from the use of weapons against civil aircraft in flight and that, when intercepting civil aircraft, the lives of persons on board and the safety of the aircraft must not be endangered". The Council further condemned "the use of weapons against civil aircraft in flight as being incompatible with elementary considerations of

humanity, the rules of customary international law as codified in article 3 bis of the Chicago Convention, and the standards and recommended practices set out in the annexes of the Convention and calls upon Cuba to join other States in complying with their obligations under these provisions;".

13. Other condemnations included that of the European Union which stated that, "regardless of the circumstances of the incident, there could be no excuse for the violation of international law and of human rights norms" (26 February 1996), and the Organization of American States is preparing a report on the shooting down of the aircraft. In his report on the situation of human rights in Cuba (22 January 1997) the Special Rapporteur of the Commission on Human Rights, Carl-Johan Groth, included the destruction of the aircraft among "violations of the right to life". In his analysis of the incident and of the documents made available to him by international organizations such as ICAO, Mr. Groth wondered whether:

> "the high command of the Cuban Army was aware that shooting down the aircraft would add a new obstacle to the already difficult relations between Cuba and the United States. It may thus legitimately be asked who in the Cuban Government has an interest in causing incidents that create such obstacles and why." (p. 14)

And he further asserted:

> "The Special Rapporteur considers that the shooting down of these aircraft was a premeditated act and that it constituted a violation of the right to life of four people." (p. 14)

14. The shooting down of the civil light aircraft by Cuba constitutes a violation of the right to life, of the right to fly over international waters and of the right of unarmed civil aircraft not to be attacked by military aircraft. It was premeditated, and deliberately disregarded the elementary principles of human rights.

15. Armando Alejandre, Carlos Costa, Mario de la Pena and Pablo Morales were murdered without warning according to the transcripts of the communications of the Cuban Armed Forces. The MiGs never attempted to communicate with the aircraft or instruct them to land. They fired no warning shots and gave no indication that the attack was imminent. They fired missiles containing 8 kilograms of powerful explosive which obliterated the light aircraft, making it impossible to recover any wreckage or the occupants' bodies.

16. There can be no excuse for this premeditated violation of the right to life.